

§ 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Dainippon Ink and Chemicals, Incorporated ("Dainippon"), which is designed to remedy the anticompetitive effects resulting from Dainippon's acquisition of Bayer Corporation's ("Bayer") high performance pigments business. Under the terms of the Consent Agreement, Dainippon will be required to divest its perylene business to Ciba Specialty Chemicals Inc. and Ciba Specialty Chemicals Corporation (collectively, "Ciba").

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an asset purchase agreement dated February 15, 2002, Dainippon, through its wholly-owned U.S. subsidiary, Sun Chemical Corporation ("Sun Chemical"), agreed to acquire Bayer's high performance pigments business for approximately \$57.8 million (the "Proposed Acquisition"). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture, and sale of perylenes.

The Parties

Dainippon is a diversified global chemicals company based in Tokyo, Japan. Primarily through Sun Chemical, Dainippon manufactures and sells a full range of organic pigments, including perylenes. Sun Chemical is the third largest supplier of perylenes in the world. Sun Chemical's perylenes are produced through two third-party, "toll" manufacturers, Lobeco Products and Forth Technologies, which are located in South Carolina and Kentucky, respectively. Sun Chemical provides these toll manufacturers the intellectual property, manufacturing know-how, and

raw materials, as well as some of the equipment, to produce perylenes.

Bayer is a subsidiary of Bayer AG, a diversified, international healthcare and chemicals group based in Leverkusen, Germany. Headquartered in Pittsburgh, Pennsylvania, Bayer engages in the healthcare, life sciences, polymers, and chemicals industries. Bayer manufactures organic pigments at its facilities located in Bushy Park, South Carolina, and Lerma, Mexico. Bayer primarily participates in the high performance pigments segment and is considered a leader in the production of perylenes, which it manufactures at the Bushy Park plant. Bayer is currently the second largest supplier of perylenes in the world.

The Perylene Market

Pigments are small particles that are used to impart color to a wide variety of products, including inks, coatings (such as automotive coatings and housepaints), plastics, and fibers. Broadly speaking, there are two main categories of pigments: organic and inorganic. Organic pigments are chemically synthesized, carbon-based compounds that generate a broad spectral range of brilliant, transparent, or opaque color shades. Inorganic pigments, on the other hand, are generally based on metal oxides and tend to impart a narrower range of dull, opaque earth tones. Because of these differences, organic and inorganic pigments often are blended together to achieve a particular color shade and effect, and thus are used as complements rather than substitutes.

Organic pigments can be further categorized into two main groups: Commodity (or classical) organic pigments and "high performance" pigments. High performance pigments offer far superior durability and light-fastness compared to commodity organic pigments. Accordingly, high performance pigments are necessary to prevent color fading in products that endure prolonged exposure to sunlight and weather, such as automotive coatings. Commodity organic pigments, because of their lower quality, cannot substitute for high performance pigments in such demanding applications. High performance pigments are significantly more expensive than commodity organic pigments.

Perylenes are a class of high performance pigments that impart unique shades of red, such as maroon and violet, and offer a particularly high degree of transparency. Perylenes are primarily used to impart color to automotive coatings, and are used to a

lesser degree in plastics and carpet fibers. Because no other pigment or colorant offers the same combination of unique color shades and high performance characteristics that perylenes provide, perylene customers could not achieve the same colors and performance levels in their products without perylenes. Thus, there are no substitute products that perylene customers could turn to, even if faced with a significant price increase for perylenes.

As Sun Chemical and Bayer are two of only four viable suppliers of perylenes in the world, the perylene market is already highly concentrated, as measured by the Herfindahl-Hirschman Index ("HHI"). The Proposed Acquisition would significantly increase concentration in the market to an HHI level of 4,856, an increase of 680 points. The Proposed Acquisition would also eliminate the vigorous head-to-head competition between Sun Chemical and Bayer that has benefitted perylene customers in the past. By eliminating competition between Sun Chemical and Bayer in the market for perylenes, the Proposed Acquisition would allow the combined firm to unilaterally exercise market power, as well as increase the likelihood of coordinated interaction among the remaining perylene suppliers. As a result, the Proposed Acquisition would increase the likelihood that purchasers of perylenes would be forced to pay higher prices for perylenes and that innovation and service in this market would decrease.

Entry into the perylene market is not likely and would not be timely to deter or counteract the anticompetitive effects that would result from the Proposed Acquisition. It would take a new entrant well over two years to complete all of the requisite steps for entry, including: Researching and developing perylene technology; building a perylene manufacturing facility; perfecting the art of manufacturing perylenes; and passing the rigorous battery of tests required for customer approval. Additionally, new entry into the perylene market is unlikely to occur because the capital investment required to become a viable perylene supplier is high relative to the limited sales opportunities available to new entrants.

The Consent Agreement

The Consent Agreement requires Dainippon to divest Sun Chemical's perylene business to Ciba, a diversified specialty chemicals company that is a leading supplier of pigments (but does not manufacture or sell perylenes). This divestiture would fully remedy the